IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1266 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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CHHITUBHAI CHATURBHAI & 5 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PM BHATT for Petitioner(s) : 1 - 6.MR ANSHIN H DESAI for Petitioner(s) : 1.2.1
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR PRANAV G DESAI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/12/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed

for an appropriate declaration that the State has not taken possession of Survey No.9 to the extent of 6179 Sq.Mts. land during the life time of Urban Land Ceiling Act ('ULC Act' for short) particularly from 30.06.1994 to 30.03.1999. It is also prayed that consequence of such failure to take possession before 30.03.1999, it be declared that the State is now not entitled to take such possession under the New Enactment Repealing Act, 1999 and consequently, the petitioners' title to the land Survey No.9 along with possessory right remains undisturbed and indefeasible in law and the question of determining compensation under Section 11 of the Old ULC Act would not survive. It is also further prayed that as a further consequence, the impugned notices at Annexure – F and H purporting to be notices under Section 11 be declared inoperative and not enforceable against the petitioners, in as much as, the State cannot claim to take possession of disputed land after 30.03.1999 when principal Act of 1976 has been repealed and has ceased to operate. Alternatively, it is also prayed that if any in event, upon perusal of the materials placed on record by the respondents, this Court comes to the conclusion that the action of the State, which purports to have taken possession of Survey No.9 before 30.03.1999 is valid, then, in that event the petitioners be held entitled to

fall back upon general law relating to compensation as provided in Land Acquition Act, 1894 of land bearing Survey No.9 of 6179 Sq.Mts., inasmuch as the Special Law i.e. ULC Act, which was applicable, prior to 30.03.1999 including Section 11 thereof is repealed w.e.f. 30.03.1999 and cannot be invoked after 30.03.1999. It is also further prayed that it also be declared that Section 4 provisio of New Act – 15 of 1999 does not afford any protection to cases under Section 11 filed if any after 30.03.1999 and therefore, illegal. It is also prayed that as a consequence, directions be issued to respondent No.2 to treat 30.03.1999, as the date of issuing notification under Section 4 of the Land Acquisition Act and determine compensation on the basis of market value of disputed land, which according to the petitioners is Rs.1200/- per Sq.Mtr. as on 30.03.1999.

2. Mr.K.M.Parikh, learned Advocate has submitted that now in this matter, he has instructions to appear on behalf of the petitioners and therefore, this Court has heard Mr.K.M.Parikh, learned Advocate appearing on behalf of the petitioners. Mr.K.M.Parikh, learned Advocate appearing on behalf of the petitioners at the outset and after going through alternative prayers made in terms of para (D), (D-1), (D-2) and (E) has submitted that such

prayers cannot be granted and therefore, he has not made any submissions with respect to aforesaid reliefs. Mr.Parikh, learned Advocate appearing on behalf of the petitioners has made only one submission with respect to taking possession of the disputed land prior to 30.03.1999 and has only contended that till repeal Act came into force, the State has not taken possession of the land bearing Survey No.9 admeasuring 6179 Sq.Mrs, therefore, after the Repeal Act, the State has no authority to take possession of the aforesaid land in question and has no jurisdiction to issue notice for determining compensation under Section 11 of the Principal Act i.e. ULC Act.

3. Facts leading to the present Special Civil Application in nutshell are as under :

One Chaturbhai Narottam, late father of the petitioners filed Form No.1 under the ULC Act being Declaration No.2469 with respect to the land situated at Vadsar inclusive of land being Survey No.9 situated at Vadsar admeasuring 6179 Sq.Mts. of land. Said declaration was processed by the competent authority and Dy. Collector, Vadodara, Unit No.3, ULC, Vadodara and the Competent Authority under the ULC Act by order dated

29.10.1985 passed an order that original declarant is entitled to retain one unit i.e.1500 Sq.Mts. of land as retainable land and therefore, declared land bearing Survey No.9 at Vadsar admeasuring 6179 Sq.Mts. as excess land under the ULC Act. It appears that thereafter, a final statement was served upon the original declarant under Section 10(1) of the ULC Act declaring aforesaid land as excess land came to be published in the Government Gazette on 23.09.1987 and as nobody submitted any objection under Section 10(2) of the Act against the said Notification, further Notification under Section 10(3) of the Act was published in Government Gazette on 03.12.1987 and land in question came to be vested in the State Government free from all encumbrances. It appears that thereafter further Notification under Sections 10(5) and 10(6) came to be issued and it is the specific case on behalf of the State that Competent Authority has taken possession of the land in question on 29.03.1988 in presence of Panchas and Panchanama came to be prepared to that effect. Thus as per the State Government and Competent Authority possession of the excess land came to be taken over by the State Government on 29.03.1988. It appears that having served with Notification under Section 10(3) of the Act dated 26.03.1988 and as per the petitioners they were not served with the order under

Section 9 of the Act, Original declarant preferred Special Civil Application No.1976 of 1988 before this Court making a grievance that they are not served with order under Section 9 of the Act and therefore, they could not prefer Appeal under Section 33 of the Act before the Tribunal against the order passed by the Competent Authority and therefore, this Court while disposing the aforesaid Special Civil Application No.1976 of 1988, by order dated 21.04.1988 directed the Competent Authority to give certified copy of the order passed under Section 9 of the Act so as to enable the petitioners to prefer the appeal against the order passed under Section 33 of the Act. That thereafter, heirs of the original declarant preferred Appeal before the Urban Land Tribunal under Section 33 of the Act being Appeal No.Vadodara 207/1988 and the Urban Land Tribunal by judgment and order dated 30.06.1994 dismissed the said appeal on merits as well as by observing that proceedings are already over up to Section 10(5) of the Act and even the order passed by the Competent Authority was taken under revision under Section 34 of the Act and the said order was confirmed. Thereafter nothing was done by the petitioners. That thereafter, the competent authority and Dy. Collector, ULC, Vadodara issued impugned notices dated 13.08.1999 for determining compensation under

Section 11 of the ULC Act with respect to the land bearing Survey No.9 admeasuring 6179 Sq.Mts. of land situated at Vadsar. Further notice also came to be issued by the Competent Authority on 07.02.2000 also for determining compensation under Section 11 of the ULC Act. It appears that having served with the notice dated 13.08.1999 for determining compensation under Section 11 of the Act, the petitioners submitted their objections to the same vide objections dated 08.09.1999 by submitting that as the ULC Act has been repealed, therefore, whatever lands which remains in the possession of the owners on 30.03.1999 cannot be disturbed / interfered from 30.03.1999. That thereafter, the petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India for the aforesaid reliefs.

4. Mr.K.M.Parikh, learned Advocate appearing on behalf of the petitioners has submitted that in fact actual possession of the land in question has not been taken taken over by the State prior to 30.03.1999 and the petitioners continued to be in possession of the land in question and they continued to cultivate the land and Notification under Section 10(6) of the Act has not been published after Notification under Section 10(5) of the

Act, and therefore, it is not open for the State to take possession after 30.03.1999 considering provisions of the Repeal Act of 1999. It is also further submitted by him relying upon the interim order passed by the learned Single Judge of this Court in Civil Application No.9859 of 2000 that when the learned Single Judge of this Court passed an interim order of maintaining status-quo with regard to the standing crops on the land in question even in 2000-2001, therefore, the petitioners were in possession of the land in question on 30.03.1999, therefore, it is requested to issue appropriate declaration as prayed for. Having faced with affidavit-in-reply, it is submitted that Notification under Section 10(6) of the Act have been issued but Notification under Section 10(5) was not served upon the petitioners and therefore, possession which is alleged to have taken in the month of March, 1988 it can be said to be a paper possession only and/or cannot be said that the said possession has been taken after following due procedure. Under the circumstances, it is requested to allow the present Special Civil Application and grant relief as prayed for. No other submission have been made by Mr.Parikh, learned Advocate appearing on behalf of the petitioners.

5. The petition is opposed by Mr.Dipen Desai, learned AGP appearing on behalf of the competent authority and Dy.Collector, ULC, Vadodara and Mr.Pranav Desai, learned Advocate appearing on behalf of the Vadodara Municipal Corporation. It is submitted that as such possession is already taken over by the Competent Authority by drawing Panchnama on dated 29.03.1988 and procedure up to Section 10(6) of the Act has been followed. It is submitted that even the appeal preferred by the petitioners came to be dismissed in the year 1994 against the order of competent authority declaring 6179 Sq.Mts. land as excess vacant land and nothing was done thereafter. It is also submitted that even since 1988 in the Revenue record there is entry with respect to the excess vacant land and since 1988 land in question is absolutely vested in the State Government free from all encumbrances. It is also further submitted that even the land in question is already allotted to Vadodara Municipal Corporation for public purpose and for constructing houses and since 2000 the construction is already made and other persons are staying in the residential houses and third party rights have been created. It is submitted that much prior to 30.03.1999 possession of excess vacant land has been taken over by the State and possession of which is allotted to the

Vadodara Municipal Corporation. It is also further submitted that so far as the impugned notices issued for determining compensation under Section 11 of the Act are concerned, as per the provisions of the Repeal Act, 1999, proceedings under Section 11 of the Act are saved and therefore, it is permissible. Therefore, it is requested to dismiss the present Special Civil Application.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. At the outset it is to be noted and it is not disputed and on the contrary it is admitted by Mr.Parikh, learned Advocate appearing on behalf of the petitioners that Vadadora Municipal Corporation is already allotted the land in question i.e. Survey No.9 which was declared as excess vacant land under the ULC Act and possession of the same is already handed over to the Corporation and Vadodara Municipal Corporation has also put up construction on the very land in question. It is to be noted that by order dated 29.10.1985 land being Survey No.9 situated at Vadsar admeasuring 6179 Sq.Mts. Land came to be declared as excess vacant land in the declaration filed by the original land owner Chaturbhai Narottam and Notification under Section 10(1)of the Act

came to be published in Government Gazette on 28.03.1987 and Notification under Section 10(3) of the Act came to be published on 03.12.1987 and thereafter Notification under Section 10(5) of the Act came to be issued / published in the year 1988 and the land in question absolutely vested in the State free from all encumbrances and necessary entry to that effect in the revenue record also came to be made. Even Notification under Section 10(6) came to be published in the year 1988 and as per the State, possession of the land has been taken over by the State on 29.03.1988 by drawing panchanama and in the presence of panchas. Now it was the case on behalf of the petitioners initially that Notification under Section 10(5) and 10(6) were never published. However, subsequently the very petitioners in other applications have submitted that Notification under Section 10(6) of the Act is published but they were not served with the Notification under Section 10(5) of the Act. It is also required to be noted that the appeal preferred by the petitioners under Section 33 of the Act came to be dismissed in the year 1994 by observing that proceedings are already over up to Section 10(5) of the Act. The petitioners have never disputed the same. Now in light of the above, it appears that there are disputed question of facts with respect to possession taken over prior to

30.03.1999, which cannot be determined in a petition under Article 226 of the Constitution of India. It appears from the record that proceedings up to Section 10(6) of the Act have reached in the year 1988 itself and possession has been taken over on 29.03.1988. However, it is the case on behalf of the petitioners subsequently that said possession is paper possession and/or is not in accordance with law after following due procedure. Now the fact remains that the possession has been taken over by the State in the year 1988 much prior to 30.03.1999. As stated above now possession of the land in question is already allotted to the Vadodara Municipal Corporation for construction of residential house for public purpose and even Vadodara Municipal Corporation has already put up construction and third parties are residing. Under the circumstances, the petitioners are not entitled to any relief sought in the present Special Civil Application. No other submissions have been made on behalf of the petitioners. Under the circumstances, the prayer of the petitioners for declaration as prayed for cannot be granted in a petition under Article 226 of the Constitution of India.

8. So far as the prayer of the petitioners with respect to impugned notices under Section 11 of the Act

for determining compensation is concerned, looking to the provisions of the Repeal Act, 1999, proceedings under Section 11 of the Act are saved and same is permissible. Under the circumstances and in view of the fact that possession is already taken over by the State in the year 1988 much prior to 30.03.1999 and now the land in question is already allotted to the Vadodara Municipal Corporation in the year 2000 and Vadodara Municipal Corporation has already constructed residential houses for public purpose, the prayer of the petitioners to quash and set aside the impugned notices for determining compensation under Section 11 of the Act, also cannot be granted.

9. For the reasons stated above, the petition fails and deserves dismissal and accordingly it is dismissed. Rule discharged. No order as to costs.

[M.R.Shah, J.]

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